

NEW HAMPSHIRE DEPARTMENT OF
ENVIRONMENTAL SERVICES

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WATER COUNCIL

MAR 03 2006

Docket No. 03-10-WC

In the Matter of:
Appeal of the Conservation Law Foundation
In Re: Water Quality Certificate #2003-001

OBJECTION TO MOTION FOR REHEARING

NOW COMES Endicott General Partnership, the applicant in the within proceeding, and respectfully objects to the Motion for Rehearing filed by the Conservation Law Foundation ("CLF"), and in support thereof, states as follows:

1. That the usual and customary criteria for an administrative body to grant a Motion for Rehearing is to determine whether the proponent has provided new facts or new evidence that was not available at the time of the hearing or whether the proponent has provided evidence that the regulatory body has made errors of law which require rehearing. For the purposes stated herein it is respectfully submitted that CLF has produced no new evidence and has raised no meritorious legal issues and as such the Motion for Rehearing should be denied.

2. That the Water Council conducted an expansive hearing, permitting the CLF to present all witnesses which it intended to call to present evidence relative to the lawfulness and reasonableness of the DES decision. The witnesses called by the CLF were clearly not experts in water quality and the CLF had the burden of proof to provide evidence that the decision of the DES was unlawful and unreasonable and clearly the Council appropriately found that the CLF failed to satisfy this burden.

3. All parties to the within proceeding presented expansive pleadings and evidentiary materials in advance of the hearing which were available to all Council members which supplemented the testimonial evidence which was produced at the hearing.

4. That the testimony of DES officials clearly established that the actions of the DES were lawful and reasonable relative to the Water Quality Certificate. There was no qualitative testimony offered by the CLF to rebut the testimony of DES officials relative to the lawfulness and reasonableness of the decision to grant the WQC.

5. There was an adequate record before the Council both in pleadings and testimonial evidence to support the findings of the Council that the actions of the DES were lawful and reasonable.

6. That there is no new evidence advanced in the Motion which has not been previously submitted in the voluminous pleadings submitted by the CLF.

7. That it is recognized that different chairpersons conduct hearings in different ways however it is respectfully submitted that the CLF had an adequate opportunity both through its pleadings and the witnesses which it presented to present evidence necessary to sustain their burden of proof, however the Council has correctly found that qualitatively said evidence failed to satisfy the CLF's burden of proof. This failure was not as a result of the chairman's conduct of the meeting but was a result of the failure of the CLF to produce evidence to establish that the decision of the DES was unlawful and unreasonable.

8. That all findings of the Council are supported in the record and were made after the Council had an opportunity to hear the examination and cross-examination of witnesses and after Council members had an opportunity to inquire of witnesses that appeared before them.

9. That the CLF was not denied substantive of procedural due process in the within hearing.

WHEREFORE, Endicott respectfully moves and prays:

- A. That the request for rehearing be denied; and
- B. For such other and further relief as may be just.

Respectfully submitted,

ENDICOTT GENERAL PARTNERSHIP
By its attorneys,
McNEILL, TAYLOR & GALLO, P.A.


By: 

Malcolm R. McNeill, Jr.

Dated: March 2, 2006

CERTIFICATE OF SERVICE

I hereby certify that the within has this date been forwarded by first-class mail, postage prepaid to Thomas F. Irwin, Esq. and Jennifer L. Patterson, Esq.


Malcolm R. McNeill, Jr.